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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
101-P291/P3157US1

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on _____

Signature _____

Typed or printed name _____

Application Number	Filed
10/687,534	October 15, 2003

First Named Inventor
Robert H. Kondrk

Art Unit	Examiner
3627	Refai, Ramsey

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☑ attorney or agent of record.
Registration number 32947.

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

/C. Douglass Thomas/
Signature

C. Douglass Thomas
Typed or printed name

408-955-0535
Telephone number

October 17, 2011
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

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8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Kondrk et al.	Attorney Docket No.: 101-P291/P3157US1
Application No.: 10/687,534	Examiner: Refai, Ramsey
Filed: October 15, 2003	Group: 3627
Title: Method and System for Submitting Media for Network-Based Purchase and Distribution	Confirmation No.: 7744

PRE-APPEAL BRIEF

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants appeal the rejection of all claims in the final Office Action dated June 17, 2011. Applicants request careful consideration of this Pre-Appeal Brief in advance of Applicant's submission of a formal appeal brief.

I. Introduction

In the Office Action, the Examiner rejected claims 1-6, 11-13, 16, 18, 21, 23-29, 31, 32, 34, 36, 39-41, 44-46 and 50 under 35 U.S.C. §102(e); and rejected claims 7-10, 14, 15, 17, 19, 20, 22, 30, 35, 37, 38, 42 and 43 under 35 U.S.C. §103(a). These rejections are fully traversed below. Claims 1-32, 34-46 and 50 are pending.

II. Patentability of Claims 1-32, 34-46 and 50

Claim 1 pertains to a method for submission of a media collection to a media distribution site. The method obtains metadata for a media collection as well as for a plurality of media items to be included in the media collection. Additionally, media content for the plurality of media items can be identified and converted into compressed media files. The metadata and the media files can then be provided in an electronic package that is submitted to a media distribution site. The method of claim 1 is used to enable a submitter

to submit an electronic package to a media distribution site in a controlled and properly formatted manner. That is, the method of claim 1 is used to facilitate submission of an electronic package concerning a media collection being submitted to a media distribution site.

In contrast, the processing described in Galuten et al. is primarily, if not exclusively, concerned with managing musical content that is made available for distribution. As to the electronic package that is formed and transmitted to a media distribution site, the Examiner points to column 3, lines 50-52 and 55-61. However, this portion of Galuten et al. merely indicates that content elements (e.g., songs) can be bundled together into a package called "Media Object". "Every content element is optionally compressed, digitally secured and associated with appropriate rights to form Media Objects." However, such processing is done for distribution of the content elements (or Media Objects), not for submission to a media distribution site. As to submission, column 3, lines 12-13 of Galuten et al. simply states: "The system of the present invention receives musical content in various formats and from various sources…." Hence, Galuten et al. is not offering tools or assistance to users that are submitting media collections to a media distribution server machine for distribution. Instead, Galuten et al. is concerned with post-submission processing, such as for production, payment and delivery of musical content.

Moreover, claim 1 recites that for a media collection being submitted, metadata for the media collection is obtained, and media content for the media items in the media collection are identified. The identified media items can then be compressed to form compressed media files. The compressed media files and the metadata can then be placed in an electronic package and submitted to an online distribution site. As noted above Galuten et al., does not teach or suggest submission of such electronic packages to an online distribution site.

Still further, claim 1 recites various characteristics of the electronic package for the media collection. Galuten et al. does not teach or suggest these characteristics of the electronic package. More specifically, Galuten et al. does not teach or suggest at least: (i) "the metadata provided for the media collection includes at least media collection metadata as well as media item metadata, the media item metadata being provided for each of the

media items within the media collection," or (ii) "the electronic package further includes a digital signature for each of the compressed audio files, and includes a digital signature for the image file."

(i) metadata provided for a media collection that includes at least media collection metadata as well as media item metadata for each of the media items within the media collection.

On page 5 of the Office Action, the Examiner makes reference to col. 3, lines 6-55, and col. 29, line 50 to col. 30, line 45 as teaching these additional limitations. Applicants respectfully disagree.

Col. 3, lines 6-55 of Galuten et al. discuss support for musical content. Col. 29, line 50 to col. 30, line 45 of Galuten et al. describes protocols for communication, one such being XML. An example of a song object encoded in XML is also described. However, neither of these portions of Galuten et al. teach or suggest providing both (i) media collection metadata and (ii) media item metadata for each of the media items within the media collection. At best, the song object at col. 30, lines 13-40 might correspond to metadata for a single media item. However, claim 1 recites that its electronic package includes (i) metadata for the media collection, and (ii) metadata for each of the media items in the media collection. Accordingly, it is respectfully submitted that Galuten et al. fails to teach or suggest metadata provided for the media collection that "includes at least media collection metadata as well as media item metadata, the media item metadata being provided for each of the media items within the media collection" as recited in claim 1.

(ii) digital signature in electronic package for each of the compressed audio files, and for includes a digital signature for the image file.

On page 5 of the Office Action, the Examiner makes reference to col. 12, line 15 as teaching these additional limitations. Applicants respectfully disagree.

Col. 12, line 15 of Galuten et al. mentions "digital signatures" in the context of defining the term "certificate". Even so, claim 1 is not merely claiming a digital certificate. Instead, claim 1 is claiming that the electronic package of the media collection that "includes a digital signature for each of the compressed audio files, and includes a digital signature for the image file." That is, nothing in Galuten et al. provides any teaching or suggestion for

"the electronic package further includes a digital signature for each of the compressed audio files, and includes a digital signature for the image file" as recited in claim 1.

In Galuten et al., a retail offer is certified. As col. 12, lines 7-11, Galuten et al. states:

> The Reference Service validates the "Candidate Offer" and creates a certified Retail Offer. The Reference Service checks the "Candidate Offer" against the E-contract and the content-specific business rules. If the offer is consistent with the offer and the rules, it is electronically certified.

There is, however, no notion of usage or need for digital signatures for compressed audio files and an image file. Hence, it cannot be reasonable concluded that Galuten et al. teaches an electronic package of a media collection which "includes a digital signature for each of the compressed audio files, and includes a digital signature for the image file." Accordingly, it is respectfully submitted that Galuten et al. fails to teach or suggest an electronic package of the media collection that "includes a digital signature for each of the compressed audio files, and includes a digital signature for the image file." as recited in claim 1.

Neither the Official Notice taken by the Examiner nor Marsh are able to overcome the deficiencies of Galuten et al. noted above.

Accordingly, it is submitted that claim 1 is also patentably distinct from Galuten et al., alone or in combination with Marsh or the Official Notice.

In addition, claim 31 pertains to a computer readable storage medium that includes computer program code that can operate similar to the method discussed above regarding claim 1. As such, for at least reasons similar to certain of those noted above with respect to claim 1, it is submitted that claim 31 is also patentably distinct from Galuten et al., alone or in combination with Marsh or the Official Notice.

Claim 50 pertains to a method for submission of a media collection to a media distribution site and is similar to the method discussed above regarding claim 1. As such, for at least reasons similar to certain of those noted above with respect to claim 1, it is submitted that claim 50 is also patentably distinct from Galuten et al., alone or in combination with Marsh or the Official Notice.

Furthermore, in rejecting certain claims, the Examiner took Official Notice of certain "concepts and advantages". Applicants again make a seasonable challenge to the taking of

Official Notice. The recitation of the phrase "concepts and advantages" in each of the "official notices" is ambiguous and renders the official notices improper because not being "capable of instant and unquestionable demonstration as being well-known." Applicants submit that taking "official notice" of concepts and advantages is not permissible. Applicants submit that the "official notice" was originally improper. See MPEP 2144.03 (B). Also, there is inadequate motivation of record to combine the Official Notice with Galuten et al.

Moreover, as to claim 30, the Examiner's Official Notice refers to "queuing a transmission". Claim 30 is, however, queuing an electronic package until a user indicates with a submission input that the electronic package is to be submitted. Hence, unlike the Examiner's allegation of Official Notice, the queuing of claim 30 is queuing a transmission to accommodate server or bandwidth availability. Hence, even if the Official Notice were to be combined with Galuten et al., the combination would not teach or suggest claim 30.

Based on the foregoing, it is submitted that claims 1, 31 and 50 are patentably distinct from Galuten et al., alone or in combination with Marsh or the Official Notice. Additional limitations recited in the independent claims or the dependent claims are not further discussed because the limitations discussed above are sufficient to distinguish the claimed invention from the cited art. Accordingly, it is respectfully requested that the Examiner withdraw the rejection to claims 1-32, 34-46 and 50 under 35 U.S.C. §103(a).

Applicants hereby petition for an extension of time which may be required to maintain the pendency of this case, and any required fee for such extension or any further fee required in connection with the filing of this Amendment is to be charged to Deposit Account No. 504298 (Order No. 101-P291).

I am the attorney or agent acting under 37 CFR 1.34

Respectfully submitted,

/C. Douglass Thomas/

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